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**House Judiciary Committee**
**Subcommittee on Crime, Terrorism and Homeland Security**
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Mr. Chairman and members of the subcommittee, thank you for the opportunity to testify today on the need to reform the laws under which the Bureau of Alcohol, Tobacco, Firearms & Explosives operates.

I am an attorney in private practice. For over 25 years, I have focused on firearms laws. I have represented individual citizens in firearms related matters and I have represented firearms dealers, manufacturers, and importers throughout the United States in civil and criminal proceedings. Unfortunately, several of those businesses have been the subject of license revocation actions by ATF. That is the area I will focus on today.

There are four major problems with the current process for civil enforcement against federal firearms licensees. Those problems are:

* Undefined legal standards, especially the absence of a definition of "willful";

* A focus on trivial, immaterial violations unrelated to public safety;

* Imposition of unreasonable standards of perfection; and

* A hearing and appeal process that is heavily stacked against the licensee.

First, ATF treats virtually all errors in dealers' records, no matter how few or how minor, as "willful" violations if the dealer knows what he is required to do. As ATF presumes that all dealers know the requirements of the law, this means that any error, no matter how minor, may result in license revocation. For example, one of my clients received a revocation notice that listed "violations" such as not denying a transfer to customers who answered "Y" or "N" instead of writing out "Yes" or "No" on firearms transaction forms. In several other cases, the revocation notice was based in part on the fact that the transaction form did not include, as part of the residence address, the purchaser's county of residence, although the city or town, and state (with zip code), were stated.

ATF also looks far into the past to support the charge of "willfulness," often referring to inspections of the same licensee 10 or even 20 years earlier.

None of this is what the Congress had in mind when it enacted the "willful" standard in 1986; as the Senate Judiciary Committee Report stated, the purpose of adding "willfully" to the license revocation procedure "is to ensure that licenses are not revoked for inadvertent errors or technical mistakes." S.Rep. No. 98-583 at 88. But ATF continues to argue against this

interpretation. In fact, in one case, ATF argued to the court that Congress' addition of the word "willfully" to the license revocation statute was "without practical significance." Because several courts have adopted ATF's interpretation, the term has become meaningless as it applies to civil violations. Congress should make clear, by enacting a definition of "willfully," that "willful" means that the licensee intended to break the law, just as the Supreme Court has said that it does for criminal violations. Congress should also make clear that a reasonable statute of limitations applies to license revocation actions.

Second, ATF treats these supposedly "willful" violations as worthy of revocation proceedings, even when they could not possibly create any danger to public safety. For example, one of my clients in Illinois was accused of "willful" violations for not listing on his transaction records the type of ID the customer presented. In each instance, though, the customer's driver's license number, state firearms identification card number, or both, were recorded and easily identifiable either on the transaction record or on an attached receipt. None of these violations prevented an effective background check on the buyer from being conducted, nor would it have prevented tracing any of the firearms.

Combining this draconian approach with the low standard of "willfulness" leads to enforcement actions against licensees who have made every good faith effort to comply with the law. In the Illinois case I mentioned, ATF revoked my client's license due to 12 supposedly incomplete blocks on the forms, relating to 19 specific items of information. In the time period ATF was inspecting, that dealer and his customers completed 880 transaction forms, with approximately 34,320 blocks to be completed or approximately 51,240 items of information to be provided. Based on those numbers, ATF did not dispute that the records were 99.96% complete and accurate. But when the dealer's appeal was argued in the 7th Circuit, the attorney for the United States stated (and I quote) "No errors are permissible." Justice Kennedy's observation about judges and lawyers applies equally to licensees:

> We all tend toward myopia when looking for our own errors. Every lawyer and every judge can recite examples of documents that they wrote, checked, and doublechecked, but that still contained glaring errors.

*Groh v. Ramirez,* 540 U.S. 551, 568 (2004)(Kennedy, J., dissenting).

That demand for perfection is an impossible burden for anyone, including federal firearms licensees, to meet. If ATF continues to enforce the law in the current manner, few licensees will remain in business. Congress should make clear that licensees should only face serious penalties for serious, material violations that could result in sales to prohibited persons or that could impede legitimate investigations.

Finally, the appeal process is stacked against licensees. Unlike similar proceedings in many other agencies, a licensee who challenges an ATF revocation does not receive a hearing before an administrative law judge because, in response to Congress' reforms of the Gun Control Act in 1986, ATF actually repealed the regulation requiring hearings to be conducted by an administrative law judge. Instead, the hearing is conducted by an ATF employee with no legal training — usually an investigator from another field division, or even a retired ATF employee, who has been involved the same type of revocations. It would be an understatement to say the

hearing officers are deferential to the agency; indeed, they are the agency. At one hearing, I moved to dismiss the proceedings, and the hearing officer turned to the attorney representing ATF and asked, “What should I do?” ATF counsel instructed the hearing officer to deny my motion, and he did.

This lack of a neutral adjudicator is exacerbated by the fact that the final decision on revocation is made not by the hearing officer but by the local director of industry operations, the very person who initiated the revocation. And, if that was not bad enough, the counsel for the director of industry operations, who advices the director of industry operations on the final decision is the counsel who presented the case to the hearing officer on behalf of the director of industry operations.

In addition to the lack of a neutral adjudicator, licensees do not always get copies of the information ATF intends to use against them unless they request it in advance and the ATF counsel feels like giving it to them.

Congress should require administrative law judges to preside at all these hearings, and ensure that licensees have the opportunity to prepare for the hearing. Congress should also require an automatic stay of an ATF decision until there has been a final, unappealable judicial decision.

I thank the subcommittee for its time, and will be happy to answer any questions.